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Current Topics.

The Magistrates' Association.

THE annual meeting of the Magistrates' Association, which took place on 8th October, was enlivened by interesting speeches by LORD SANKEY, LORD SIMON, LORD MERRIMAN, Sir GERALD DODSON and Miss FLORENCE HORSBRUGH, M.P. LORD SANKEY, in the course of his address, said that there was a general increase in certain classes of crime, like stealing and pilfering, which was probably due to the war and was merely temporary. The increase was not confined to juveniles, but in their case there were heavy temptations. The father might be in the forces and the mother in munitions, with parental control reduced to nothing. He said that it was difficult to lay down any rigid rule about age for magistrates on the juvenile court panels, but it was not desirable to select anyone who from age, inexperience or any undue devotion to a theory, was unable to give proper attention to the evidence, and to form a decision. A combination of the freshness of youth and the experience of age made an ideal tribunal. The LORD CHANCELLOR, in his address, said that he did not select the magistrates for the juvenile court panels. It would not be for the best to go on appointing the same set of people. It was important to have a strong admixture of fathers and mothers, since magistrates had to deal not only with juveniles, but also with parents. Sir GERALD DODSON, the Recorder of London, emphasised the importance of probation and welfare service for all types of discharged prisoners, whether convicts or short-term prisoners. He contended that there should be welfare officers in addition to the hard-working probation officers, and that the ticket-of-leave system should be abolished. LORD MERRIMAN spoke on the matrimonial side of the work of the magistrates, and advised magistrates to guard against making excessive awards of maintenance. Miss HORSBRUGH, M.P. (Parliamentary Secretary to the Minister of Health), spoke on the subject of the new Child Adoption Act with special reference to illegitimate children. A total of 570 magistrates, of whom about 230 were women, attended the meeting. The Magistrates' Association is to be congratulated on the work it is doing, particularly in connection with conferences of magistrates, which it is arranging in all parts of the country on the subject of juvenile courts, and which will be addressed by expert speakers.

Nullity Suits and Service Overseas.

THE current issue of *The Law Society's Gazette* reports that detailed instructions have been issued with regard to the procedure to be followed with regard to medical inspection of parties to nullity suits serving in the Forces overseas. They provide that on a registrar being informed at the hearing of a summons for the appointment of medical inspectors that a party is a member of His Majesty's Forces overseas, he will, in a proper case, make an order appointing two officers of the Royal Army Medical Corps, to be nominated by the D.M.S., D.D.M.S., or A.D.M.S. of the Command in which the party is serving, as medical inspectors in respect of such party. The solicitor concerned should send to the Under-Secretary of State for War, the War Office (A.W.1), 45 Eaton Square, London, S.W.1, the following documents: Duplicate of the order and plain copy; minute on identification adapted and duly filled up; draft affidavit verifying report; detailed instructions to the inspectors (obtainable at the Divorce Registry); draft affidavit of service of the order to be used if the party fails to attend; a photograph of the party if available; and a written request that the D.M.S., D.D.M.S., or A.D.M.S. should nominate in writing two officers of the Royal Army Medical Corps as medical inspectors, and should transmit to the senior of them the nomination and other documents. The instructions provide for the return of the documents to the Divorce Registry by the quickest means available and, on their receipt, the registrar will inform the solicitor concerned, who must attend for the purpose of filing the report and paying any court fees.

Employment of ex-Service Solicitors.

ONE of the most important items of news in the current issue of *The Law Society's Gazette* is the announcement by the Council of the result of their recent communication with the Appointments Department of the Ministry of Labour and National Service, relative to the position of solicitors discharged from the Forces. The Ministry state that the present arrangement is for particulars of such solicitors to be referred to the Appointments Register, Sardinia Street, Kingsway, W.C.2. The Registrar then, in consultation with Mr. THOMAS CUNLIFFE, the Secretary of the Legal Appointments Committee, The House of Lords, S.W.1, ascertains whether there is any Government work or similar work with a local authority for which solicitors should be considered. It is suggested that a solicitor who does not obtain such work should approach The Law Society if he desires to take up other work as a solicitor. In any event, in order that the record of serving solicitors and articled clerks which the Council are keeping may be kept as up to date as possible, solicitors and articled clerks discharged from the Forces should notify the Secretary of The Law Society of the fact. It is added that the Appointments Department of the Ministry of Labour and National Service will advise solicitors who come to them to apply to The Law Society for work.

The Factories Report.

LAWYERS engaged in actions for damages arising out of common law or statutory negligence, and workmen's compensation proceedings, will find the report of the Chief Inspector of Factories, published on 6th October, of particular relevance to their work. The number of reportable accidents in 1942 was 314,630, of which 1,363 were fatal. In 1941 the number was 269,652, and the number of fatal accidents was 1,646. If the number of lives lost in the Huddersfield fire is deducted, the decrease in the number of fatal accidents is even more noticeable, and it is regarded as an index of the care taken in preventing serious accidents. Of the total number of accidents, fatal and non-fatal, 203,865 were suffered by men, 71,244 by women, 29,028 by youths and boys, and 10,493 by young women and girls. Most of the accidents to women were in machine making. The Chief Inspector gives as reasons for the general increase in the number of accidents the increased employment of women and girls and pressure for full production, the rapid acceleration of production combined with increased war weariness, the increased demands on overworked supervisory staffs, and the employment of older men. Accidents to women were in 1942 66 per cent. more numerous than in 1941 and 368 per cent. more numerous than in 1938. The chief inspector states that, although at first sight this is alarming, in its real perspective it can be taken as a measure of the way women are taking their share in the heavy and dangerous industries and this is borne out by the fact the industries more closely associated with the making of munitions account for about 85 per cent. of the increase. In the section of the report devoted to industrial health, Dr. E. R. A. Merewether states that health from the industrial angle is satisfactory, but points out that there is a limit to the secondary jobs which can be taken on in addition to factory work and insists on the importance of regular periods of unfettered leisure. He considers that mental fatigue or staleness is increasing. The report also contains some statistics dealing with the longer hours of work of young persons. It may be recalled that the report on the "Personal Factor on Accidents," issued by the Medical Research Council of the Industrial Health Research Board, and published last year by the Stationery Office, mentioned as one of the general causes of accidents long hours of work, and noted that young people were more liable than older people to accidents (86 SOL. J. 262). It also stated that proficiency in skilled work went together with a low accident rate, and it would seem to follow that an increase in skill will reduce the accident rate. The increase in accidents generally must be regarded to some extent as an inevitable incident of the pressure of war.

Autrefois Acquit.

WHAT was stated to be an entirely new point on the law of "*autrefois acquit*" came before the Recorder of Bournemouth on 4th October (*The Times*, 5th October) in *R.* v. *C. R. Browne*. The accused had pleaded "Not guilty" to charges of obtaining by false pretences two separate sums of £5 from branches of the Midland Bank. He had previously been committed at the Hampshire Quarter Sessions last April of two similar offences, and had then admitted and had had taken into consideration the two offences with which he was now charged, together with five others. He received twenty months' imprisonment for all these offences at the April trial, but on appeal both the conviction and the sentence were quashed. At the trial at Bournemouth counsel for the accused argued that because there had been a previous conviction, and alternatively because there had been a previous acquittal on the two charges now before the court, the accused could not be put in peril of a conviction again on the same charges. A jury was accordingly empanelled to try these special pleas, and in his direction to them the learned Recorder stated that it was a principle of law that a man could not be put in peril twice in respect of the same offence. The Court of Criminal Appeal had said nothing with regard to the outstanding charges, and it was unnecessary that they should, because the sentence which they quashed was for the two offences of which he had been found guilty at Winchester. It was assumed that that sentence was increased by the taking into account of the outstanding charges, but the outstanding charges were only taken into account as subsidiary matters, and went by the board entirely when the sentence was quashed. The Recorder advised the jury that they ought to find that, whether the plea was one of *autrefois convict* or *autrefois acquit*, the defence had failed to make out the plea on either of those two charges for which the defendant was indicted. The jury nevertheless found that the accused had been previously convicted. The rule that "a man may not be put twice in peril for the same offence" is "an established rule of the common law" (2 Hawk. c. 35). The jury in the present case came to the conclusion that there had been a previous conviction, but that cannot be right, as the power of a court to take into consideration other offences admitted by the accused relates only to sentence and not to conviction. He was never convicted, nor having admitted the offence, could he be said to have been acquitted. On the other hand, he certainly was in peril of imprisonment in respect of the offences, which were taken into consideration in awarding the sentence on the conviction which was subsequently quashed, but he was put in peril by his own voluntary act, a fact which seems to take the case out of the common law rule.

Inquiries of Local Authorities.

As long ago as July, 1939, a memorandum was adopted by the Council of The Law Society and a number of representative bodies of local government officials recommending the procedure to be followed with regard to inquiries of local authorities to supplement official searches. The memorandum sets out a number of appropriate forms of inquiry for different types of local authority, and it recommended that each local authority should answer for an inclusive fee of five shillings. The memorandum was published in *The Law Society's Gazette* for July, 1939. In the current *Law Society's Gazette* the Council stated that the memorandum has found general favour, except in a few instances where inadequate or no replies have been forthcoming from local authorities, or higher fees have been charged. The Council have taken up the matter with the bodies concerned and, in nearly every case, with satisfactory results. The Council state that one of the causes of the difficulties is that some solicitors tend to use the full form for making the inquiries, regardless of whether all the questions are fully relevant to the matter in hand. In one case a local authority decided to make a charge of two shillings for each question because of the large number of irrelevant questions asked. That there may be justification in some cases for such a course appears from the fact that not all of the information sought in the forms of inquiry is such as ought to be supplied by the local authority either as a matter of statutory duty or for reasons of public service to ratepayers and persons having financial interests in the area of the local authority concerned. The Council emphasises the importance of using the correct form and of deleting inappropriate questions in the interests both of preserving that harmony between solicitors and clerks to local authorities which is so much to be desired and also of the smooth working of the arrangements set out in the memorandum.

Local Government Reorganisation.

THE Association of Municipal Corporations and the County Councils Association recently placed before Sir William Jowitt, Minister without Portfolio, proposals for an inquiry into the reorganisation of local government services, and urged that pending such an inquiry, piecemeal alterations of local government services should not be made. In a letter put before a recent meeting of the council of the Municipal Corporations Association, Sir William Jowitt gave assurances that it was no part of the Government's plan to allow the system of local government to be destroyed, but rather were they convinced of the need to develop it still further. There was, however, a strong case for reconstruction plans to be ready for execution after the war. He could see no way of putting through a comprehensive inquiry into local government services such as local authorities and the general public would regard as authoritative under one year, and the period might well run to several. Until reconstruction issues had been ultimately decided by Parliament little progress could be made with such plans; indeed, it was not too much to say that the delays involved in the inquiry suggested were likely to be highly prejudicial to the success of the Government's post-war plans. It was after the most careful consideration of that prospect that the Government had come to the conclusion that they would not be justified in deferring further consideration of the various departmental proposals affecting particular services until the whole position had been the subject of a comprehensive inquiry. When the Government considered any proposal for a change in a particular service, the effect which that change was likely to have on local government was one of the principal factors for consideration; but it was not, and could not be, the only factor, and there might be occasions when improvements in particular services, for which there was a clear case, could only be brought about at the cost of some modification of local government structure. It may be that the organisations concerned will not be completely satisfied with the Minister's assurances, but it is good to know that the effect on local government is regarded by the Government as one of the principal factors for consideration when any particular reform is contemplated.

The British Claims Commission.

THE essential functions of the British Claims Commission are described in a statement recently issued by the Commission and published in the current issue of *The Law Society's Gazette*. These are divided under five headings. The first, with regard to traffic accidents, relates to the investigation and settlement of claims by civilians arising out of traffic accidents involving vehicles owned, controlled or used by the War Department, Air Ministry, Ministry of Aircraft Production, Ministry of Supply and Admiralty, and the prevention of such traffic accidents. The second heading relates to training and manœuvres, including manœuvres by the Home Guard, and the damage to cattle, crops and other property caused thereby. The function of the Claims Commission include not only the investigation and settlement of claims and the prevention of damage, but also the investigation on behalf of the Board of Trade of claims in respect of damage from the erection of defence works on land in respect of which claims would arise under the War Damage Act, 1943. The third set of functions consist of the investigation and settlement of claims by civilians for damage to property in which troops have been billeted or to the contents of such property. The fourth head consists of the investigation of various miscellaneous claims arising out of the negligence of soldiers and damage by fire, explosions and accidental shootings and other cases in which the War Department assumes liability for the acts of its personnel. Finally, the Commission is concerned with the investigation of claims of the kinds indicated above, where the damage is alleged to have been caused by the forces of the governments of Norway, Holland, Belgium, Czechoslovakia and Poland or of the Council of Free France, with a view to recommending appropriate compensation. The addresses of claims officers can be obtained from the local police, and all particulars of claims should be reported to them in the first instance.

Recent Decisions.

In *Carltona, Ltd.* v. *Commissioners of Works and Others*, on 6th October (*The Times*, 7th October), the Court of Appeal (The MASTER OF THE ROLLS, GODDARD and DU PARCQ, L.JJ.) held that the requisitioning of a factory for storage purposes under reg. 51 (1) of the Defence (General) Regulations was valid, that the notice of requisitioning could not be invalid as there was no necessity to give any notice at all, that the responsible official had brought his mind to bear on the matter in deciding that the requisitioning was necessary and within the regulation, and that where a competent authority had come to a conclusion the courts could not, in the absence of bad faith, which was not alleged in that case, investigate the grounds or reasonableness of the court's decision, but could only see that the act of the authority fell within the powers conferred upon it.

In *R.* v. *Anderson, ex parte Wilson* on 8th October (*The Times*, 9th October), the Court of Appeal (The MASTER OF THE ROLLS, GODDARD and DU PARCQ, L.JJ.) held that no appeal lay from a decision by the Divisional Court not to make an order on a motion to commit to prison Sir John Anderson, an ex-Home Secretary, for contempt of court, as the appeal arose out of a criminal cause or matter within s. 31 (1) of the Supreme Court of Judicature (Consolidation) Act, 1925, the charges alleged against Sir John Anderson, of giving authority to others whereby the appellant was prevented from having access to his solicitors and so presenting his grievance to court being clearly charges of criminal offences and falling within the jurisdiction of the King's Bench Division exercising its summary jurisdiction.

Criminal Law and Practice.

Time for Stating a Case.

POINTS of pure law always have their special appeal to the mere practitioner, and are welcome when they occur as a change from the daily round and common task of addressing the court on questions of fact. One of these "nice" points was recently before the Divisional Court (*Gregory* v. *Cattle* [1943] 1 K.B. 412). The question was as to the time limit, if any, imposed by the relevant statutes, within which a case must be stated by justices for the opinion of the High Court, and it involved the consideration of the Summary Jurisdiction Act, 1857, s. 2, the Summary Jurisdiction Act, 1879, s. 33 (2), and the Summary Jurisdiction Rules, 1915, r. 15.

Under s. 2 of the 1857 Act no limit of time for stating a case was imposed. Under s. 33 (2) of the 1879 Act "The application shall be made and the case stated within such time and in such manner as may from time to time be directed by rules under this Act." The hearing was to be subject to rules made under the Judicature Act, 1875. Subject as aforesaid, the Act of 1879 was, so far as it was applicable, to apply to any special case stated under the section as if it were stated under the 1857 Act, provided that nothing in the section was to prejudice the statement of any special case under that Act. Rule 52 of the Summary Jurisdiction Rules, 1915, made under the 1879 Act, provides: "An application to a court of summary jurisdiction under s. 33 of the Summary Jurisdiction Act, 1879, to state a special case shall be made in writing and shall be left with the clerk of the court at any time within seven clear days from the date of the proceedings to be questioned. . . . The case shall be stated within three calendar months after the date of the application."

Each one of the cases before the court set out that it was a case stated under the Summary Jurisdiction Act, 1857, and the Summary Jurisdiction Act, 1879. This was in accordance with Form No. 210 given in "Stone's Justices Manual," 74th ed. (1942), p. 2273. The objection was taken that the court had no jurisdiction to hear the cases as they had been stated out of time, and *Stokes* v. *Mitcheson* [1902] 1 K.B. 857 was cited. In that case the special case was expressed to have been stated under the later Act only. The objection taken in that case was not that the proceeding was out of time, but that the informant, who desired to appeal, was not "a person aggrieved" within s. 33 of the 1879 Act, and the proceeding by case stated under that Act was available only to "a person aggrieved." The answer to this was that the appeal could be heard because the 1857 and 1879 Acts should be read together, and the informant was a "party to the proceeding," to whom a right of appeal was given by s. 2 of the 1857 Act. The court held, supporting the latter view, that an appeal lay.

In giving judgment in *Gregory* v. *Cattle*, Charles, J., quoted from the judgment of Lord Alverstone, C.J., in *Stokes* v. *Mitcheson*, *supra*, in which Lord Alverstone drew attention to the fact that s. 33 of the 1879 Act was, in Pt. II of the Act, headed "Amendment of Procedure." He also quoted from the judgment of Channell, J., a statement that the powers of stating a case under the 1857 and 1879 Acts were not separate powers, although there was slightly different machinery, but that in substance the two Acts were to be read together. Charles, J., held that the two Acts must be read together, and that of 1879 effected an alteration in the procedure. With regard to the reliance placed on the proviso to s. 33 (2), Charles, J., said that he could not see how the imposition of a time limit for stating a case prejudiced the statement of a case. His lordship also observed that the 1915 Rules did not interfere with the essential matters relating to the statement of a case. He therefore held that the preliminary objection was well founded.

Hallett, J., said that he had great difficulty in making up his mind, and he did not find as much assistance in *Stokes* v. *Mitcheson* as the other members of the court, but agreed that some assistance could be derived from the judgments. He stated that the crucial matter in bringing him to the conclusion that the appeal was out of time was the heading: "Amendment of Procedure" to Pt. II of the 1879 Act, in which s. 33 appeared.

In his dissenting judgment, Stable, J., took the view that the proviso to s. 33 (2) of the 1879 Act meant that the procedure under the 1857 Act was to be left intact, if the view was correct that s. 33 (2) was to amend the procedure. He said he was fortified in this view by the statement from the judgment of Channell, J., in *Stokes* v. *Mitcheson*, quoted above. He accordingly held that the preliminary objection should fail.

Curiously enough, no reference appears to have been made in *Gregory* v. *Cattle* to *Hughes* v. *Wavertree Local Board* (1894), 10 T.L.R. 357. There a case was expressly stated under the rules then applicable under the 1879 Act, a rule in substantially similar terms to r. 52 of the 1915 Rules, the words being "a case shall be stated in three months after the date of the application and after the recognisances are entered into." It was held, that so far as the rule related to acts to be done by the magistrates, it was directory, although Cave, J., said that it might be a condition precedent to the appeal so far as acts to be done by the appellant were concerned. In that case it was clear that the party appealing had always been ready to concur in a statement of a case, and all he had to do was done. The delay was due to the illness of the magistrates' clerk and the appellant was not to blame for the delay. The hearing in *Gregory* v. *Cattle* was on 2nd May, and the appellant was convicted and fined under the Defence (General) Regulations, 1939. The clerk to the justices had forwarded the cases on 26th May to the Treasury, Solicitors' Branch Department, but it appears from the facts as stated in the report of the case in (1943), 1 All E.R., at p. 655, that the fault for the delay lay with the appellant's solicitors.

It is interesting to note that Hallett, J., said (at p. 418 of [1943] 1 K.B.): "What would have been the position if the justices here had purported only to state cases under s. 2 of the Act of 1857 it is not necessary to decide." One cannot help feeling, in view of the paucity of authority on the point, that it would have been very difficult to decide it. On the face of it, it would appear that the lack of time limit in the Act of 1857 is impliedly repealed by the later Act and rules, except for the proviso to s. 33 (2) of the 1879 Act, which makes confusion worse confounded by appearing to prevent this from applying to a case stated under the 1857 Act. Much of this confusion could be prevented by passing a consolidating Act to abolish the duality in the law of stating a case and to produce uniformity of practice and procedure. Until this is done awkward problems of the kind that came before the court in *Gregory* v. *Cattle* are bound to recur.

A Conveyancer's Diary.

Judgments in previous Proceedings: Admissibility as Evidence.

IT is sometimes necessary in the course of civil proceedings to prove facts which have been in issue in other earlier proceedings. If the record of those earlier proceedings were admissible that would often be the least troublesome way of proving the facts in question. But the rule is very strict that *res inter alios acta alteri nocere non potest*.

This general point was one of those dealt with in *Re Sharman* [1942] Ch. 611, which is also of interest in other ways. The testator made his will a week or two before his death in November, 1928, and appointed his brother Charles and his friend Thomas Paton to be executors and trustees thereof. He proceeded: "and I give to the said Thomas Paton, if he shall prove my will and accept the trusteeship thereof, a legacy of £1,000 free of duty." Probate was granted to both executors on 25th March, 1929, and the £1,000 legacy was paid to Paton at the suggestion of his co-executor. In 1931 an originating summons was issued for the decision of certain questions arising in the administration, and an inquiry was ordered. The matter came up before Clauson, J., in 1933, and the parties then came to terms. All the counsel engaged on the summons had indorsed their briefs as follows: "The plaintiff and the defendant Paton by their counsel having stated that they did not wish to become or act as trustees of the will agreed to disclaim or retire from the trusteeship of the will if the defendant A should appoint either two individual trustees or the Public Trustee or a trust company to be trustees of the will in their place, it being understood that the plaintiff and the defendant Paton are to complete their duties as executors." In 1938 another summons was issued, this time under Trustee Act, s. 41, asking for the appointment of new trustees in place of Charles Sharman, who had died, and Thomas Paton, "who has disclaimed or alternatively is desirous of retiring from the trusteeship thereof." A suitable order was made in 1939 reciting that Thomas Paton "disclaimed the trusteeship thereof." Finally, the present summons asked whether Thomas Patbn had qualified for the legacy of £1,000, which he had been paid as long ago as 1929. Thomas Paton swore affidavits denying the allegation that he had never acted as trustee of the will, saying that he and his co-trustee had in fact paid certain income to tenants for life of the estate, and pointing out that this was the first time that there had been any question as to his legacy, while the compromise of 1933 was intended to settle all questions between him and the estate. He also swore that he never knew of the recital as to disclaimer embodied in the 1939 Order.

Bennett, J., first held that "it must now be taken as settled that while the office of trustee may be disclaimed before acceptance, once it has been accepted it cannot be disclaimed." Of course, the question would more usually come up where a trustee who has intermeddled seeks to say that he has never accepted the trusteeship: he would no doubt be fairly easily held to have accepted the trust by implication and so to be unable to divest himself of it except in one of the ways in which a trustee can retire from his office. In the present case the position was the other way round, and the trustee was anxious to say that he had accepted the trust. The learned judge accepted as sound the proposition of counsel that "the office of trustee can only be disclaimed when it has not been accepted."

The next question, therefore, was the weight to be given to the 1939 Order; as against Thomas Paton it was contended that the recital of disclaimer operated to estop him from saying that

he had not disclaimed. If there were such an estoppel, of course, he would be treated as having disclaimed, and so never to have accepted the trusteeship, thus losing his £1,000. This contention, however, failed, since Bennett, J., held that the recital referred to a matter not disputed in the summons of 1938-39, and one which was in any case collateral to the matter at issue in such summons. The court was not called upon to adjudicate, and did not adjudicate, on the question whether Thomas Paton had disclaimed. If that had been the subject-matter of the litigation he would have been estopped by the recital in other litigation against the same parties. There remained the question of fact on which the learned judge held that Thomas Paton had not disclaimed; he had proved the will, a circumstance which is capable of being a sufficient acceptance even if it stands alone; he had also done "acts which could only be done by him as trustee"; thus, he had done certain acts in relation to legacies which were held to be the acts of a trustee and not an executor; he had formed a limited company to take over the estate; and he had accepted payment of the legacy of £1,000 given him on condition of his accepting the office of trustee. Finally, he had sworn to such acceptance. The interesting thing about this part of the judgment is that it clearly envisages that a man can be, in respect of one and the same estate, both an executor and a trustee at the same time, and that acts very much on the borderline between the duties of executor and trustee may be treated as referable to the trusteeship in the event of a dispute as to its acceptance. There is for this purpose no clear cut distinction at the moment of assent. Such a rule may not seem very logical, but it is practical. Most properly drawn wills appoint the same persons to be both executors and trustees. It would be inconvenient if one or more of such persons could take part in the administration but evade his trusteeship, because the two sets of duties require concurrent performance in most cases until the administration is complete. The practical lesson of *Re Sharman*, so far as it was decided on the facts, is that where A is appointed executor and trustee, it is likely to be most difficult for him to escape the trusteeship if he proves the will at all. If he does not prove the will, he must be careful not to intermeddle, lest he be fixed with the trusteeship even though not with the duty of administration.

It may be convenient here to mention a recent decision of the Court of Appeal in a common law case which will have some effect on a certain type of Chancery proceedings. *Hollington* v. *Hewthorn* [1943] 1 K.B. 587 was an ordinary action for negligence arising out of a traffic accident. For one reason or another there was extremely little direct evidence and an attempt was made to put in evidence the conviction of one of the defendants of the statutory offence of careless driving at the same time and place as those of the accident. This evidence was rejected by the Court of Appeal, whose judgment was read by Goddard, L.J. The judgment is very full, and would be difficult to summarise adequately. But its essence is the rule as to *res inter alios acta*, the case of *Rex* v. *B* not being between the same parties as *A* v. *B*. The importance for our purpose is that, besides certain recent divorce cases, the court expressly disapproved *In the Estate of Crippen* [1911] P. 108. That case, of course, was in the Probate Court and effect was given in it to the rule that a felon is not allowed to profit in property matters from his felony; the felony of the murderer Crippen was not proved by a retrial of the facts but by evidence of his conviction for murder. I discussed this rule fully in the "Diary" of 9th March, 1940, and again to some extent in that of 7th February, 1942, and suggested doubts whether the evidence of the conviction was correctly admitted in *Re Crippen*, especially having regard to the rejection of the findings of coroners' juries by Clauson, J., and Farwell, J., in *Re Sigsworth* [1935] Ch. 89 and *Re Pollock* [1941] Ch. 219. It is clear from the remarks of the Court of Appeal that in any future case where it is alleged that property rights are affected by the rule against felons profiting by their felony, the issues of fact must be tried *de novo*, as was done in *Re Pitts* [1931] 1 Ch. 546.

Obituary.

MR. A. CALDECOTT.

Mr. A. Caldecott, solicitor, of Messrs. Cooper, Son & Caldecott, solicitors, of Henley-on-Thames, died on Tuesday, 5th October, aged seventy-two. He was admitted in 1896.

MR. E. G. C. CHAPMAN.

Mr. Ernest George Cary Chapman, solicitor, of Messrs. Barrow and Chapman, solicitors, of Dulverton, Somerset, died on Thursday, 7th October, aged seventy-six. He was admitted in 1890.

The following prisoners of war were successful in the trust accounts and book-keeping portion of the intermediate examination of The Law Society:—

Held in Oflag VII.B (Prisoner of War Camp), Germany, in June:—Stebbings, D. L.; Varley, J. P. (the only two candidates).

Held in Stalag Luft III, Germany, in June:—Barber, A. P. L. (the only candidate).

Landlord and Tenant Notebook.

Children; and Animals.

REFUSALS by landlords to let premises to tenants with children, and restrictions imposed by them which prevent tenants from keeping animals on the premises, have lately been criticised in Parliament (the former) and the Press (both).

There is, of course, no legal remedy against a private landlord for merely refusing to let to tenants with children, though possibly if any housing authority within the Housing Act, 1936, decided to embark upon such a policy, proceedings could be taken. Part V of the Act deals with the provision of housing accommodation for the working classes, and in this part will be found s. 85, subs. (2), of which runs: "The authority shall secure that in the selection of their tenants a reasonable preference is given to persons who . . . have large families . . ."

It is more pertinent to inquire into the enforceability of a condition in a lease or tenancy agreement providing for determination in the event of children arriving. I do not profess to have come across such a condition, and I consider that even such a covenant as the comprehensive covenant against alienation which figured in *Jackson* v. *Simons* [1923] 1 Ch. 373—not to assign, or underlet, or part with the demised premises or any part thereof, or part with or *share* the possession or *occupation* thereof or any part thereof—would hardly be held to operate in such a case. If it were argued that it did, or if a more explicit covenant were entered into, the question of public policy might arise. As far as I know, there is no direct authority on the point; but there are decisions showing that the courts regard provisions which will have the effect of separating parents from their children as contrary to public policy.

When overcrowding results, other considerations of course apply. The landlord of a dwelling-house who causes or permits it to be overcrowded is liable to penalties under s. 59 (1) of the Housing Act, 1936, and is deemed, by *ib.* (5), to cause or permit it to be overcrowded if (*a*) (after notice) he fails to take such steps as it is reasonably open to him to take for securing the abatement of the overcrowding, including if necessary legal proceedings for possession of the house, or (*b*) if, when letting, he or his agent had reasonable cause to believe that it *would become* overcrowded, etc., or failed to make inquiries of the proposed occupier as to the number, age and sex of persons who would be allowed to sleep in the house.

Neither subs. (1) nor subs. (5) (*a*) actually gives the landlord a right of re-entry, it will be observed, so if by any chance overcrowding point were reached in the course of a long term granted by an agreement which was silent on the subject, no penalties would be incurred, nor could the lease be summarily determined. (It may be noted that, when defining overcrowding, the Act provides that children under one year old do not count at all, those between one and ten years old counting as "one-half of a unit" (s. 58 (2)). Whether a landlord who had been deliberately misled by answers to the statutory inquiries mentioned in s. 59 (5) (*b*) would have a right to avoid the lease, depends on the implications of the decision in *Sowler* v. *Potter* [1940] 1 K.B. 271, an authority discussed and criticised in the "Notebooks" of 23rd and 30th December, 1939 (83 SOL. J. 955 and 971). Tucker, J., held in that case that a landlord who had granted a lease to a tenant on being misled into believing that she was not identical with a person to whom he would not have granted it was entitled to a declaration that the lease was void *ab initio*, on the ground of mistaken identity; alternatively, on the ground of fraud. As far as the decision goes, the first ground would not apply merely if an intending tenant falsely represented that he had no children; but the second ground indicated points to a possibility of rescission on the ground of fraud.

The reluctance of certain landlords to permit tenants to keep animals is apt to provoke more feeling than does unwillingness to let to those with families. One letter on the subject which I have seen was written on behalf of a society known as "Our Dumb Friends' League," and might be said to have invited the reply that a meaning given to the adjective in question in the N.E.D. is "not emitting sound"; one of the objections to animals (and to children) is based on their habit of emitting much and disturbing sound. I am, of course, not concerned with the reasonableness or otherwise of such restrictions, and merely mention the objection as showing that considerations of public policy are hardly likely to enter into this question. And if, as admitted, I have never come across a condition by which a lease is made voidable in the event of children arriving, covenants against the keeping of animals have been in use for some time. Indeed, their existence was recognised by those responsible for Defence Regulation 62B (1), which legalises the keeping of pigs, hens and rabbits in any place on any land, notwithstanding any provision to the contrary in any lease or tenancy. Proviso (i) declares that this does not authorise the keeping of the animals named in such a place or in such a manner as to be prejudicial to health or a nuisance; and it has been suggested that the omission to include the male bird in the case of poultry was deliberate, the reason being the annoyance caused by the rooster's habit of untimely vociferation.

Covenants providing against the keeping of animals vary in form and scope. In the case of flats, the prohibition is often found among "regulations" which the tenant has covenanted to observe, and this, on *Spicer* v. *Martin* (1888), 14 A.C. 12, and *Hudson* v. *Cripps* [1896] 1 Ch. 265, principles, would give other tenants a right of action in the event of breach—provided the covenant be absolute. But some landlords are content with a covenant by which tenants shall not keep animals without licence, stipulating, however, that the licence shall be revocable at any time; this device, though it may occasion bad feeling, is unlikely to lead to litigation worth reporting. *Pearce* v. *Maryon-Wilson* [1935] Ch. 188, shows that no tenant would have any say in the question whether a licence should be revoked or granted.

To-day and Yesterday.

LEGAL CALENDAR.

October 11.—In Trinity Term, 1779, the Court of King's Bench ordered that those prisoners in the King's Bench Prison, "whose actions were supersedable should, if they did not sue out the same before a certain day, be struck off the books and turned out of the prison." The reason for this order was that a number of prisoners, who were in possession of rooms, remained in the prison for the purpose of sub-letting them to advantage, by which they gained a weekly income of £1 3s., receiving £1 4s. and paying only 1s. to the marshal for rent. As there were not rooms for those debtors who were obliged to be in the prison, the court thought it a hardship, and on the 11th October their order was put in execution, when nearly 100 were discharged for this reason "to the great joy and comfort of the prisoners, who now will get habitations for 1s. a week for which they had paid 24s."

October 12.—On the 12th October, 1589, there is a note in the Inner Temple records: "Upon the request of the Lord Chancellor, Mr. Savage's petition is granted and Mr. Edward Hancocke is admitted to join with Mr. Savage in his building. And Mr. Ratclyfe and Mr. Hele are appointed to view the place where the building shall be." The Chancellor was Sir Christopher Hatton, himself a member of the Inn. It was afterwards decided that the building's site should be 44 feet by 18 feet in the lower part of the garden and that there should be "convenient rooms for studies and staircases." In these early days buildings were often erected by members at their own expense and in return the Inn granted them a personal right of occupation of some of the chambers for life and a right to nominate other members for admission to the rest. Such a privilege was bestowed in this case.

October 13.—On the 13th October, 1660, Pepys witnessed the execution of Thomas Harrison, one of the Regicides: "I went out to Charing Cross, to see Major-General Harrison hanged, drawn and quartered; which was done there, he looking as cheerful as any man could do in that condition. He was presently cut down, and his head and heart shown to the people, at which there were great shouts of joy. It is said that he said that he was sure to come shortly at the right hand of Christ to judge them that now had judged him; and that his wife do expect his coming again. Thus it was my chance to see the King beheaded at Whitehall and to see the first blood shed in revenge for the blood of the King at Charing Cross."

October 14.—On the 14th October, 1748, "ended the sessions at the Old Bailey when Samuel Shorer and Richard Shaw, for robbing Admiral Mathew's servant of 7s. 2½d. on Wimley Green; Thomas Emerson for assaulting John Swaine in his dwelling-house and taking from him 3s.; Sarah Kenningham for stealing 27 guineas from a locked chest and Samuel Chapman for smuggling, received sentence of death." Emerson was reprieved and transported for fourteen years.

October 15.—One night in July, 1742, the Westminster Police organised a general search for suspicious characters, arresting anyone they found in the streets. Twenty-eight women were sent to St. Martin's Roundhouse, where the keeper, William Bird, forced them all into a cell 6 feet square and 5 feet 10 inches high. He kept the window close shut and in the result four of the prisoners died of suffocation. At the inquest a verdict of wilful murder was returned and Bird was committed to Newgate. In due course he was tried at the Old Bailey and on the 15th October he was condemned to death for the murder of Phyllis Wells, an honest, industrious woman, who should never have been arrested at all.

October 16.—On the 16th October, 1555, Nicholas Ridley, Bishop of London, and Hugh Latimer, formerly Bishop of Worcester, were burnt at the stake at Oxford for heresy, under Queen Mary. Ridley had been involved in the unsuccessful attempt to place Lady Jane Grey on the throne and on its failure had sought in vain for pardon. They were executed in the ditch opposite Balliol College. Ridley wore a black gown and velvet tippit furred and a velvet cap. Latimer had on a poor Bristol frieze gown. He greeted his companion with the famous words: "Be of good comfort, Master Ridley, and play the man; we shall this day light such a candle by God's grace in England as, I trust, shall never be put out."

October 17.—On the 17th October, 1789, Mr. Edward Law, the rising barrister, who afterwards became Lord Chief Justice Ellenborough, married the beautiful Miss Ann Towry, having persisted in his courtship despite three refusals. Though his looks were no match for hers, he won her despite a crowd of competitors. Her loveliness did not fade and was so unusual that strangers would collect in Bloomsbury Square to gaze at her as she watered the flowers on the balcony of her home. Lord Campbell writes that "for many years the faithful couple lived together in uninterrupted affection and harmony, blessed with a numerous progeny, several of whom united their father's talents with their mother's comliness."

RETORTS.

Retorts in some of our tribunals are not on as high a level as one could wish. It seems that recently in one London court a learned magistrate was moved by some impertinence of a prisoner to ask: "What do you mean by that, you rat?" Another echoing an expression used by a prisoner said *à propos* of the proceeding: "It's a lousy job, isn't it?" It is hardly surprising that by the time he was remanded the accused was saying "Ta ta, judge." The classical example of the inapt word from the bench must surely be the occasion when an abusive prisoner saw fit to insult Mr. Justice Ridley. "You're an old ——" he cried. "I'm not," retorted the judge. "Yes, you are!" "I'm not!" "Yes, you're a ——" "I'm not." And so on. Even prisoners should try not to fall below a certain level in their rejoinders. It is not overwhelmingly difficult. Once Sir Jonah Greene, a Recorder of Dublin, was sentencing a hardened female criminal. "There is no use," he said, "in committing you to prison in this country. I shall transport you for seven years and I hope in a new country you will endeavour, with the blessing of God, to regain the character you have tarnished by your career of vice in this." To this impressive appeal the female answered: "Ah, thin, please your lordship, whin do we sail?"

Reviews.

Harris: Hints on Advocacy. By GEORGE W. KEETON, M.A., LL.D., Barrister-at-Law. Eighteenth Edition, 1943. Demy 8vo. p. iv and (with Index) 334. London: Stevens & Sons, Ltd. 12s. 6d. net.

Legal education in England does not include a training in the art of advocacy, if one excepts the moots on abstract points of law which law students are encouraged but not compelled to attend. It has always been the habit here to look upon advocacy as an art to be learned in the hard school of experience only. A barrister or solicitor who hears of this book for the first time, if there be such a person, may well ask himself what can be learned of advocacy from a book. He who has been lucky enough to read this book as a student knows that it is indeed possible to learn from a book. For example, it is possible to learn from this book that, as the late Maurice Healy said in "The Old Munster Circuit," "the examination-in-chief of a witness gives the artist full scope," while "all that can be learned about cross-examination is contained in a few principles." According to "Harris" (p. 56) this is borne out by the opinion of Sir James Scarlett and Sir Frank Lockwood. One may also learn from "Harris" hints on cross-examining the witness with that difficult panacea of Mr. Weller, senior, the alibi, as well as the different types of expert witnesses and liars. This book is no more a substitute for experience of the courts than a book on swimming is a substitute for experience of deep water. But the would-be advocate who reads it will have a tremendous start over him who has not. The two opening chapters have been re-written with modern instances, but the rest of the book is substantially unaltered. Both editor and publishers are to be congratulated on an admirable achievement.

Montgomery's War Damage Act, 1943. By R. M. MONTGOMERY, K.C., M.A. (Oxon). Demy 8vo. pp. xxxv and (with Index) 153. 1943. Eyre & Spottiswoode (Publishers), Ltd., London. Price 10s. net.

This volume comprises the official copy of the Act and of the War Damage (Highways Scheme), 1943, with tables showing comparative sections of the repealed War Damage Acts and the Consolidation Act. The Introductory Summary is a survey of the legislation on this important subject, and enables the reader to acquaint himself with its salient features. The recent Act contains no new law, and is purely a consolidating measure. The text of the recent Act is not annotated, but the table of comparative sections enables this volume to be read in conjunction with the learned author's previous book, viz., "War Damage Act, 1941."

The next quarterly meeting of The Lawyers' Prayer Union will be held on Monday, the 8th November, at 5.30 p.m., in the Council Room of The Law Society. The speaker on this occasion will be Squadron Leader the Rev. S. Barton Babbage, M.A., Ph.D., and his subject will be "Christianity and Scholarship; Married or Divorced?"

Our County Court Letter.

Possession of Cottage.

In *Cottle* v. *Barrabie*, at Holsworthy County Court, the claim was for possession of a cottage. The plaintiff's case was that notice to quit had expired on the 25th March, and he required possession for his son who was living in the farmhouse with the plaintiff. His son was engaged on work necessary for the farm, as appeared from the certificate of the Cornwall War Agricultural Executive Committee. The defendant's case was that it was unreasonable to make the order. She was eighty-one years of age and, although she had three married daughters, she might not be welcome as a permanent lodger with any of her sons-in-law. His Honour Judge Scobell Armstrong observed that he had a discretion to override the certificate of the Committee. The defendant had given him an undertaking, however, to endeavour to find alternative accommodation. An order was accordingly made for possession in six months. No leave to proceed was given, and the position could therefore be reviewed at the end of that period. No order was made as to costs.

Sale of Horse.

In *Pugh and Murphy* v. *Williams*, at Wrexham County Court, the claim was for £34 15s. as damages for misrepresentation on the sale of a horse. The plaintiffs were each aged seventeen, and their case was that they were desirous of starting in business as carriers on Merseyside. They accordingly went to Wrexham to attend an auction sale of horses, but they mistook the date. They were put in touch with the defendant, however, and bought the horse from him for £30. It transpired that the horse was about twenty years old and was suffering from ankylosis. It was, therefore, unfit for the purpose of haulage work. The defendant's case was that the plaintiffs were anxious to buy the horse, which he was not particularly keen on selling. Admittedly the horse had been tested (on a trial run) at his suggestion, but the plaintiffs were satisfied with the test. His Honour Judge Evans, K.C., accepted the evidence of the defendant. It was a case in which the plaintiffs, like all young men, must buy their experience. Judgment was given for the defendant, with costs.

Possession of Furnished House.

In *Reeves* v. *Wherley*, at Trowbridge County Court, the claim was for possession of a furnished house. The plaintiff's case was that he had rented the house, unfurnished, for five guineas a week. In February, 1943, he was called up for the Army and he had then let the house, furnished, to the defendant at 33s. per week. Later it came to the plaintiff's knowledge that the defendant had made other arrangements with the landlord without his (the plaintiff's) concurrence, e.g., the defendant had moved the plaintiff's furniture into one room and had installed his own furniture. The plaintiff accordingly gave the defendant one month's notice to quit, expiring on the 17th July. He required the house for occupation by his wife and two boys. The defendant's case was that he lived in the house with his wife and one child and was unable to obtain other accommodation. His Honour Judge Kirkhouse Jenkins, K.C., made an order for possession in twenty-one days, with costs.

Hairdresser and Customer.

In *Joyce* v. *Franklin*, at Gravesend County Court, the claim was for damages for breach of warranty and/or negligence. The plaintiff was aged fifty, and her case was that the defendant had dyed her hair with "Inecto." This was a coal-tar derivative, and a test was invariably imposed by dabbing the customer's skin with the preparation forty-eight hours before the operation. The defendant had omitted to take this precaution, with the result that the plaintiff was away from her occupation from the 4th March to the 21st June. She had accordingly lost her wages as a cement sack cleaner. The defendant's case was that he had used the above preparation in 200 previous cases without complaint. He had warned the plaintiff of the need for a preliminary test, but she replied that her husband was coming on leave and she wanted to have her photograph taken. The test was accordingly dispensed with, on the plaintiff's acquiescence. His Honour Judge Sir G. B. Hurst, K.C., gave judgment for the plaintiff for £175, with costs.

Decision under the Workmen's Compensation Acts.

Pneumonia after Accident.

In *Kerry* v. *Staveley Coal & Iron Co., Ltd.*, at Chesterfield County Court, the claim was for an award of £290 18s. 4d. by reason of the death of the applicant's husband by accident arising out of, and in the course of, his employment. The applicant's deceased husband was aged fifty-eight and he had been employed as a dataller at the Markham No. 2 Pit. The accident had occurred on the 19th December, 1942. The respondents admitted the fact that the accident had occurred while the deceased was at work, but they contended that his death, which was due to pneumonia and intestinal trouble, had not been caused by the accident. The medical evidence was conflicting, but His Honour Judge Willes held that the applicant had proved her case. An award was accordingly made for the amount claimed, with costs.

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Workmen's Compensation Acts—Solicitor and Client Costs.

Q. Am I right in thinking that Sched. I (10) of the Workmen's Compensation Acts, 1925, precludes a solicitor from accepting any costs from a client in a workmen's compensation case, except costs which have been taxed by the court? The position in the case I have in mind is that no court proceedings at all have taken place except the recording of an agreement to take a lump sum after long negotiations and doctors' fees. Insurers increased their offer of a lump sum from £30 to £70 as a result of the solicitor's efforts. In addition to the £70, the solicitor got insurers to pay £7 7s. for costs, thinking he could accept the balance of his solicitor and client bill (approximately £13) from his client, after it was first explained the client was under no liability to pay such costs, and also provided such costs were paid after the case was ended and the relationship of solicitor and client finished. The payment of £13 in such circumstances would, of course, be akin to a gift at a time when there was no relationship of solicitor and client. If my apprehension about Sched. I (10), as above, is correct, then it means, in future that if a doctor asks me to do a workmen's compensation case I may have to refuse it.

A. Rule 80 (4) of the Workmen's Compensation Rules, 1926, provides that where a sum has been agreed on as compensation, the application under Sched. I, para. 10, of the Act, for the determination of the costs to be paid to the solicitor, must be made to the judge. Under r. 80 (7), the judge has power to make an order declaring that the solicitor shall be entitled to recover costs from the person for whom he acted, or to have a lien on any sum awarded for his costs or deduct his costs from such sum. Under r. 80 (8), the costs may be taxed. It is better to do it this way than by gift—

(1) In view of the dictum of Turner, L.J., in *Holman* v. *Loynes*, 23 L.J., Ch. 529: "Gifts from clients to their attorneys can be maintained only, when not only the relation has ceased, but the influence may rationally be supposed to have ceased also."

(2) Because such a gift might also be held to be a device for evading Sched. I (10).

Annuities—Charge on for Settlement Estate Duty and Estate Duty.

Q. Testator died in 1912. By his will, after certain pecuniary legacies, he gave the residue (all leasehold and personalty) upon trust to sell and invest and pay income to his daughter for life, with remainder to her children. By codicil he gave an annuity *simpliciter* of £104 to A, and on her death (which occurred in 1920, in the events which happened) to pay each of her two children B and C £52 per year. At the time of testator's death settlement estate duty was paid on the whole of the residue at 2 per cent.—£85. On the death of A estate duty at 3 per cent., less allowance for settlement estate duty, was paid on the passing of the annuity—£7. Should any deductions have been made from the annuities to A, B and C in respect of settlement estate duty and estate duty, and, if so, to what extent?

A. The subject is certainly a complex one. Probably if the inquirers refer to *Re Booth; Pleace* v. *Bond* [1916] 1 Ch. 349, and contemporary reports, they will be able to ascertain what should have been charged against A. With regard to the estate duty payable on A's death, it would seem that this is the case of an annuity passing to two persons, and the opinion is given, though not with entire confidence, that B and C are chargeable with the entire estate duty less a proper share of the settlement estate duty allowed. We should ask for the views of the controller on it, as the amount deductible from the *corpus* of the estate will affect the Revenue at the life owner's death.

Void Agreement—Solicitor's Liability.

Q. A and B are elderly female relatives each living alone in her own house. A prevails upon B to give up her home and live with her. This she did. A instructs her solicitor to prepare a suitable agreement giving the house to B for life after the death of A. The solicitor prepares an agreement under seal, whereby A agreed to give B a lease for twenty-one years from her death but determinable on B's death, at a nominal rent. A died at seventy-eight within sixteen months of the date of the agreement and before executing the lease. The executors now threaten to eject B, alleging agreement void under L.P.A., 1925, s. 149 (3)—lease may be more than twenty-one years from date of agreement. There is doubt whether this section applies to agreements (see "Ency. of Forms and Precedents," 3rd ed., vol. 8, p. 193, note *n*). There is ample evidence of what A intended. If B is ejected it will be due to the solicitor's faulty drafting. What remedy has B against the solicitor?

A. The opinion is given that, if there is any liability on the part of the solicitor, it can only be to the person who retained

him, viz., A or her personal representatives. The damages would appear to be limited to costs and expenses paid to the solicitor. Moreover, if the document merely creates a voluntary covenant, though under seal, the rule is that such a covenant is not specifically enforceable. On behalf of B we should contend that the document under seal amounts to a lease and that it is not limited to take effect more than twenty-one years from its date.

Possessory Title to Lands—RENT-CHARGE THEREON.

Q. A has obtained a good possessory title to a plot of freehold land which is subject to a rent-charge. Is A liable to pay the rent-charge which, during the past twenty years, has been paid by the owner of the land against whom A has acquired his possessory title?

A. The owner of the rent-charge, which is within the definition of land in the Limitation Act, 1939, has never been dispossessed (s. 31 (6)), and so has not lost his right, the payment having been made by the person liable as owner. See, as to former law, *Adnam* v. *Sandwich* (1877), 2 Q.B.D. 485.

Presumption of Death.

Q. A woman marries a soldier when she is under twenty-one; he disappears by deserting and she cannot trace him and has not heard from him for nine years. Four years ago she had a child by another man who wishes to marry her.

(1) We presume the nine years would be a good defence to a charge of bigamy, but can she take any proceedings to presume death and insure that her contemplated remarriage will be valid.

(2) If she marries the father of her child in the circumstances mentioned, what proceedings and steps can she take to legitimatise their child?

A. (1) The nine years would be a good defence to a charge of bigamy. The woman can take proceedings for presumption of death, and dissolution of her marriage, under the Matrimonial Causes Act, 1937, s. 8 (1).

(2) The child was presumptively born in wedlock. Possibly, however, its birth certificate does not show the woman's husband as the father. The child cannot be legitimated, but the putative father and the mother can adopt it under the Adoption Act, 1926.

Service of Process.

Q. Under High Court Rules of January last, address for service of writs, pleadings and notices can now be anywhere in England and Wales—the three miles limit having been abolished from central and district registries. Can writs, pleadings, etc., be served by registered post? What is the practice?

A. Writs and pleadings cannot be served by registered post. The practice has not altered by the abolition of the radius of three miles.

Societies.

SOLICITORS' BENEVOLENT ASSOCIATION.

Mr. Gerald Keith, chairman, presiding at the annual meeting of this Association held at 60 Carey Street on the 6th October, spoke of the difficulty of procuring new members now that so many younger solicitors were on war service. To make up for a slight decrease in membership, subscribers had been generous, and many had sent donations to supplement their subscriptions. He hoped members would follow the example of one who had paid his subscription in advance for twenty years. The Law Society and the provincial Law Societies had again been generous. Donations amounted to £1,053 and legacies to £2,661, both figures being considerably larger than the corresponding ones for the preceding year. The amount distributed in grants had been greater than in any previous year—£20,612. The number of beneficiaries was 430, an increase of nine in the year, but the Board had been increasing the amount of each grant to existing beneficiaries. Every case was carefully considered and no deserving case was ever refused help. He spoke highly of the tireless energy of Miss Katherine Passmore, the secretary and almoner, and the able support of Miss E. Green, her assistant.

Mr. W. M. Francis ascribed the record disbursement to the generosity of members who had continued their subscriptions whether or not they had continued to practise. It was also due, he said, to the legacies, some of them fairly substantial, which the association had received. If each member made some provision for the association in his will, the fund would be increased to an extent which would relieve the directors of much anxiety about how to meet the increase of claims which would follow the end of the war.

Mr. Bertram Tuff said that past annual reports showed that to get new members the association had to make a personal canvass. This was difficult in London, but much easier in provincial societies where the numbers were limited. To ask every present member of the association to try to get one new member would not give anyone much trouble, and if such a campaign were launched at the right moment on the target principle which had been so successful in raising money for the war, it might bring in a tremendous number of new members. He pointed out the attractiveness of the association as an insurance proposition.

Notes of Cases.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Atlantic Smoke Shops, Limited *v.* **Conlon and Others. Attorney-General for Canada and Others, Interveners.**

Viscount Simon, L.C., Viscount Sankey, Viscount Maugham, Lord Atkin, Lord Russell of Killowen, Lord Wright and Lord Romer.

30th July, 1943.

Canada—(New Brunswick)—Revenue—Provisional tax on retail sales of tobacco—"Direct" taxation—Whether a duty of customs—Validity of legislation—British North America Act, 1867 (30 & 31 *Vict.*, *c.* 3), *ss.* 92 (2), 121, 122—*Tobacco Act*, 1940 (4 *Geo.* 6, *c.* 44), *of New Brunswick*, *ss.* 4, 5.

Appeal by special leave from a decision of the Supreme Court of Canada dismissing an appeal from a decision of the Supreme Court of New Brunswick declaring that the Tobacco Tax Act, 1940, of New Brunswick, was within the constitutional powers of the province with the exception of the provision of that Act making an agent liable for the tax in question.

The Tobacco Tax Act, 1940, of New Brunswick, imposed a 10 per cent. tax on the retail price of tobacco payable under four forms. Under s. 4, form (*a*), the tax was payable by anyone purchasing tobacco for his own consumption, or for the consumption of other persons at his own expense from a retail vendor in the province; form (*b*), if the purchase was by an agent from the retail vendor for a principal acquiring tobacco for his own consumption, or that of other persons at his expense, the tax was payable by the agent; under s. 5, form (*c*), if a person residing or carrying on business in the province brought tobacco into the province for his own consumption or for the consumption of other persons at his own expense he became liable to pay the same tax as would have been payable if the tobacco had been purchased from a retail vendor in the province; form (*d*), an agent bringing or receiving tobacco in the province in similar circumstances for such a principal became liable to pay the tax. The question for decision was, first, whether the tax was "direct taxation within the province" and so within the competence of the provincial Legislature under s. 92 (2) of the British North American Act, 1867, and, secondly, whether all or any part of the Act was *ultra vires* under ss. 121 and 122 of the Act of 1867. Section 121 provides: "All articles of the growth, produce or manufacture of any one province shall, from and after the Union, be admitted free into each of the other provinces." Section 122: "The customs and excise laws of each province shall, subject to the provisions of this Act, continue in force until altered by the Parliament of Canada." The Attorney-General for Canada as intervener supported the appeal. The provinces of Prince Edward Island, Quebec, Saskatchewan, Ontario and Nova Scotia were interveners and supported the respondents.

VISCOUNT SIMON, L.C., delivering the decision of the Board, said the first question was whether the case in head (*a*) was valid. It had long been established that in considering the phrase "direct taxation" in s. 92 (2) of the British North America Act, 1867, the guide to follow was that laid down by John Stuart Mill. The tobacco tax in form (*a*) fell within the conception of a "direct tax." The money from the tax was found by the individual who finally bore the burden of it. It satisfied Mill's test for direct taxation. The case was clearer than that of *Attorney-General for British Columbia* v. *Kingcome Navigation Co.* [1934] A.C. 45. It was not necessary for their lordships to determine whether the tobacco tax in form (*a*) was for any purpose analogous to an excise duty. It was enough to accept the proposition laid down on behalf of the Board by Lord Thankerton in that case, where he said: "That if the tax is demanded from the very persons who it is intended or desired should pay it, the taxation is direct, and that it is none the less direct even if it might be described as an excise tax." The next question was whether the tax, though "direct," when the principal dealt personally with the retailer, ceased to be "direct" if the purchase was made by an agent. Although an agent was employed, it was the principal who found the money. Accordingly, the tax imposed by s. 4 (*a*) and (*b*), was valid. Apart from special considerations which applied only to s. 5, the tax in heads (*c*) and (*d*) was also valid. It was objected that s. 5 offended against ss. 121 and 122 of the Act of 1867. If s. 5 purported to impose a duty of customs it was wholly invalid, and, if it denied free admission of tobacco into New Brunswick, it was invalid, so far as it referred to tobacco manufactured in another province of Canada. They had come to the conclusion that s. 5 did not impose a customs duty. A similar argument to the contrary failed in the *Kingcome* case. This tax was not imposed on the commodity as such at all, and was not imposed on anyone as a condition of its lawful receipt. The tax was exacted from the recipient in the province only if he were the prospective smoker. This was not a duty of customs. The tax did not offend against s. 121. The appeal accordingly failed. The Tobacco Tax Act, 1940, was a valid exercise of the powers of the Legislature of New Brunswick. The order of the Supreme Court of Canada must be varied by omitting the words "with the exception of the provisions thereof making the agent liable."

COUNSEL: *Pritt*, K.C., and *Holroyd Pearce*; *Tucker*, K.C., and *Frederick Grant*; *Gahan*; *Sir Walter Monckton*, K.C., and *Devlin*; *F. W. Wallace*; *Kyffin*.

SOLICITORS: *Duncan Morris Oppenheim*; *Blake & Redden*; *Charles Russell & Co.*; *Lawrence Jones & Co.*; *Burchells*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

COURT OF APPEAL.

In re **Wakefield; Gordon** *v.* **Wakefield.**

Lord Greene, M.R., Luxmoore and Goddard, L.JJ. 18th May, 1943.

Will—Devise of "my real estate, if any"—Subsequently testator contracts to purchase realty—Purchase price unpaid—Vendors' lien—Rights of devisee—Administration of Estates Act, 1925 (15 *Geo.* 5, *c.* 23), *s.* 35.

Appeal from a decision of Farwell, J.

The testator by his will, dated the 21st April, 1939, devised "my real estate (if any) to my nephew W absolutely." At the date of the will the testator owned no real estate. On the 12th July, 1941, he entered into a contract to purchase a freehold farm for £5,475, and paid a deposit of 10 per cent., the date for completion being the 12th August, 1941. On the 14th July, 1941, the testator instructed his stockbroker to sell £7,000 stock, which realised £6,671 9s. 6d. The stockbroker, at his request, paid to him this sum by two cheques, one being for £4,927 10s. On the 31st July, 1941, the testator sent this cheque, which he had endorsed, to his solicitors, with a covering letter in which he said: "Cheque enclosed for the balance of the purchase-money. Please own receipt. There will be some small adjustments to be made but that can be done on completion." The testator died on 3rd August, 1941, before the sale was completed. It was contended on behalf of the nephew that the letter of the 31st July, 1941, expressed a "contrary intention" within s. 35 of the Administration of Estates Act, 1925, with the consequence that the nephew was entitled to have the balance of the purchase-money paid out of the testator's estate. Farwell, J., held the letter expressed no such contrary intention. The nephew appealed. Section 35 provides: (1) "Where a person . . . by his will disposes of an interest in property, which at the time of his death is charged with the payment of money, whether by way of legal mortgage, equitable charge or otherwise (including a lien for unpaid purchase money), and the deceased has not by will deed or other document signified a contrary intention, the interest so charged shall, as between the different persons claiming through the deceased, be primarily liable for the payment of the charge."

LORD GREENE, M.R., said that it was argued that such contrary intention was to be found in the letter enclosing the cheque. He was unable to follow that. The letter was a mandate which was not merely revocable during the testator's life but which necessarily came to an end with his death. There was no trust attached to the cheque and no enforceable mandate, because the mandate to the solicitors had come to an end. It followed that the intention disclosed by the letter could have no effect upon anything which was to happen after the testator's death. That disposed of the appeal. The view taken by Farwell, J., was right. The observations of Russell, J., in *In re Nicholson; Nicholson* v. *Boulton* [1923] W.N. 251, applied to the present case. The appeal must be dismissed.

LUXMOORE and GODDARD, L.JJ., agreed.

COUNSEL: *Gravenor Hewins; Wilfrid Hunt; H. E. Salt.*

SOLICITORS: *Seaton, Taylor & Co.*, for *Arnold, Greenwood & Son*, Kendal; *Kingsford, Dorman & Co.*, for *Milne, Moser & Co.*, Kendal.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Fitzwalter; Wright *v.* Plumptre.

Lord Clauson, du Parcq, L.J., and Bennett, J. 29th July, 1943.

Settlement—Tenant for life not unimpeachable for waste—Mining leases granted before life interest arose—Rights of tenant for life—Settled Land Act, 1925 (15 *Geo.* 5, *c.* 18), *s.* 47.

Appeal from a decision of Simonds, J.

The testator, who died in 1875, limited certain hereditaments to the use of certain named persons successively for life without impeachment of waste, with remainder to the use of their issue in tail. The will contained a provision cutting down the estates tail of persons born in the testator's lifetime to life estates. This provision did not state that their life interests were to be without impeachment of waste. The defendant P was born in the lifetime of the testator and the estate tail, which he would have taken under the will, was cut down to a life estate. He became tenant for life in possession in 1932. This summons was taken out by the trustees of the will asking whether P was impeachable for waste and the extent of his interest in the rents and royalties payable under certain mining leases granted by previous tenants for life in exercise of Settled Land Act powers. Simonds, J., held that the estate of the tenant for life was not limited to him without impeachment of waste and that, on the true construction of s. 47 of the Settled Land Act, 1925, he was only entitled to receive one-fourth of the rents and royalties. The tenant for life appealed.

LORD CLAUSON, delivering the judgment of the court, said that the court was not justified in reading into the will words which were not there. The life tenancy was not limited without impeachment of waste. The next question was as to the extent of the life tenant's interest in the rents and royalties payable under mining leases granted by previous tenants for life. Where minerals had been demised and rent was paid, that rent formed part of the rents and profits of the settled land and must be so dealt with subject to the provision of s. 47 of the Settled Land Act, 1925. Apart from the statutory provisions, a tenant for life, who was unimpeachable for waste, could open and work mines and receive all the profits therefrom. If he was impeachable for waste, he could not open mines, but, if the mines had been opened by the settlor or by a person interested under the settlement and entitled to open mines, the tenant for life, although impeachable for waste, could continue to work the mines and receive all the profits. The tenant for life's rights were, however, limited by s. 47 of the Act of 1925, since the rents and royalties arose from leases granted under the Act. But for the Act, this tenant for life would be entitled to all the rents and profits. It would be odd if the Legislature should, as regards the extent of the capitalisation required, differentiate between two tenants for life, who, apart from the Act, would be equally entitled to retain all the profits in question. It was, on the other hand, intelligible that where a tenant for life, being impeachable for waste, had no power to open the mines in question except under the statute, he should be allowed a smaller share of the rents and profits of the mines which he opened than as tenant for life who, being unimpeachable for waste, could open mines without the aid of the statute. That difficulty was faced by Stirling, J., in *In re Chaylor* ([1900] 2 Ch. 804), who decided that according to the true construction of s. 11 of the Settled Land Act, 1882, a tenant for life, though not declared unimpeachable for waste, was not, as regards open mines, "impeachable for waste" within the meaning of that section. That decision was not binding on their lordships, but they were prepared to follow it. The decision settled the construction of s. 11 of the Act of 1882 which had been re-enacted in the same language by the Act of 1925, s. 47. The order of Simonds, J., would be discharged and it would be declared that the tenant for life was not unimpeachable for waste, but he was nevertheless entitled to receive as rents and profits of the settled estates the rents payable under the leases of minerals after one fourth part only had been set aside as capital money.

COUNSEL: *Geoffrey Cross; Albery; Jopling.*

SOLICITORS: *Bridges, Sawtell & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

CHANCERY DIVISION.

In re Fisher, deceased; Harris *v.* Fisher.

Bennett, J. 26th July, 1943.

Administration—Intestacy—Policy moneys payable by instalments—Application of instalments—Apportionment between capital and income—Administration of Estates Act, 1925 (15 *Geo.* 5, *c.* 23), *s.* 33.

Adjourned summons.

F, who died intestate on the 14th December, 1941, was survived by his widow and four half sisters, who were his next of kin. His estate was valued at approximately £2,500. It included a policy on his life dated the 12th April, 1938. Thereunder, in the event of his death within twenty years, £52 per annum became payable for the remainder of the twenty years and the further sum of £450 at the expiration of that period. The policy had been valued for estate duty purposes at £1,036. By this summons the intestates' administrators asked whether the annuity of £52 ought to be treated as capital or income.

BENNETT, J., said that two questions arose: First, whether the annual sums of £52 differed in any way from the sum of £450 due on the 16th March, 1958; secondly, whether the annual payments and the sum of £450 were reversionary interests within s. 33 (1) of the Administration of Estates Act, 1925. On behalf of the widow it was argued that the annual sums were income arising since the intestate's death from his estate. That argument was unsound. Save in respect of amount and dates of payment, no distinction was to be drawn between the annual sums and the £450. They were all debts due and payable to his legal personal representatives as a result of the contract which he had made. The second question was one of construction of s. 33 (1) and was whether the future payments were reversionary interests and so excepted from the trust for sale. In his judgment they were not. The words in the section meant future interests vested in the intestate at his death in respect of some specific property which at that moment was in the possession or enjoyment of some other person. They did not include a mere promise to pay a man's personal representatives a sum of money at a specified time after his death. Accordingly, the duty of the intestate's personal representatives was to convert all the future payments under the policy into cash. They had power to postpone conversion, but they had not exercised that power. On the footing that the annual payments were income, it was argued for the widow that she was entitled to receive all of them, as the rule in *Howe* v. *Lord Dartmouth*, 7 Ves. 137, did not apply to the case of an intestacy occurring since 1925, with the consequence that it was the duty of the personal representatives not to realise the £450, but to leave it outstanding until 1958, when the whole sum would be invested and the widow would receive the income on it. It was necessary to consider the argument, as he had to decide what adjustments, if any, ought to be made between tenant for life and remaindermen with regard to the annual payments which had been made since the testator's death and with regard to future payments which ought to have been converted into cash at the testator's death. The argument of the widow rested on *In re Sullivan* [1930] 1 Ch. 84. He felt sure that Maugham, J., could not have decided that all the income of a wasting security, such as a copyright, was receivable by the tenant for life, unless there had been an exercise of the power to postpone conversion. If that power had been exercised, the whole of the income of a wasting security was receivable by the tenant for life. In the case of a residuary request of personalty to trustees on trust for sale, with a power to postpone, and a trust to pay the income to a person for life with a gift over, the rule of administration formulated by Lord Eldon in *Howe* v. *Earl of Dartmouth* never arose. It only arose where there was a residuary bequest to persons in succession and no trust for conversion. The rule could not apply where the trust was one to convert with a power to postpone. In such a case the terms of the trust had to be observed and *Howe* v. *Earl of Dartmouth* only became relevant where the terms of the trust had not been complied with and there had to be an adjustment of rights of tenant for life and remaindermen. Now the provisions of s. 33 had to be applied to his decision. None of the payments falling due under the policy was income. All those sums should have been converted into cash and invested as soon as possible after the intestate's death. In fact, nothing had been sold and the power to postpone had not been exercised. As respects payments made in the past, a calculation should be made in accordance with the principle laid down in *In re Chesterfield's Trusts*, 24 Ch. D. 643, and each sum apportioned between capital and income in accordance with that decision. As regards future payments, these should be realised at once and invested.

COUNSEL: *Fawell; Wilfrid Hunt; Winterbotham.*

SOLICITORS: *Kingsford, Dorman & Co.*, for *Kingsford, Flower & Pain*, Ashford, Kent.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Pollock, deceased; Pugsley *v.* Pollock.

Bennett, J. 30th July, 1943.

Administration—Legacy payable immediately after testator's death—Second legacy to trustees for son at twenty-five—Date from which interest payable.

Adjourned summons.

The testator by his will, dated the 25th April, 1937, made the following bequests: "(1) To my said wife the sum of £1,000 to be paid to her immediately after my death for her immediate requirement; (2) To my trustees the sum of £10,000 upon trust for my said son J if he shall attain the age of twenty-five years absolutely, but if he shall die under that age then I direct that the same shall fall into and form part of my residuary estate." The testator died in 1941, and his executors took out this summons asking from what date the two legacies carried interest.

BENNETT, J., said that, in dealing with the question of administration, it was important that the rule of the court should be certain. Farwell, J., in *In Re Riddell* [1936] W.N. 252, in the case of a similar bequest to a widow, held that, as the legacy was payable immediately after the death, the widow was entitled to interest from that date. He would follow that decision and decide that the legacy to the widow carried interest from the testator's death. As to the second legacy, the rules with regard to the payment of interest on pecuniary legacies were technical. In the ordinary case of a pecuniary legacy, without any direction as to payment of interest on it, the legacy, being vested, carried interest at the expiration of one year from the testator's death. A contingent pecuniary legacy carried no interest. To that rule there was an exception, the exception being that in the case of a contingent pecuniary legacy, either to a child of the testator or to somebody to whom the testator stood *in loco parentis* such a legacy, if there was no other provisions for maintenance, carried interest from the death of the testator. The terms of this legacy did not bring it within the class of contingent legacies to a child to whom the testator stood *in loco parentis*. The legacy was one to the trustees of the testator's will. The case accordingly did not fall within one of the exceptions to the general rule. Was there any other technical rule under which the legacy would carry interest from the date of the testator's death? He knew of none. In form, the legacy was in terms substantially the same as the legacy considered in *In re Medlock*, 54 L.T. 828, being a legacy to trustees. In such a case the legacy carried interest at the expiration of one year from the testator's death. Any interest payable on it followed the principal, and, if the contingency happened, the interest went to the person to whom in that event the capital of the legacy went. In the meantime the interest might be utilised for the maintenance of the legatee if he required to be maintained.

COUNSEL: *Wilfrid Hunt; Wynn Parry*, K.C., and *F. W. Waite; H. B. Vaisey*, K.C., and *Donald Cohen; F. C. Watmough.*

SOLICITORS: *Lake & Son*, for *Hole & Pugsley*, Tiverton.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION.

Weston *v.* Hearn (I.T.); Carmouche *v.* Hearn (I.T.).

Macnaghten, J. 23rd July, 1943.

Revenue—Income tax—Bonuses paid by bank to employees after twenty-five years' service—Whether remuneration and taxable, or personal gifts and not taxable—Income Tax Act, 1918 (8 & 9 *Geo.* 5, *c.* 40), *Sched. E.*

Case stated by the Commissioners on public offices or employments of profit in the City of London.

These appeals were from the decisions of the Commissioners confirming assessments to income tax made on W and C, who were employees of a bank, under Sched. E, in respect of bonuses respectively paid to them on completion of twenty-five years' service with the bank. The bonus paid to W was of the value of £250 and that paid to C was of the value of £50. The Commissioners held that each of the bonuses represented a payment in respect of remuneration for past services and was properly exigible to tax. It was contended on behalf of W and C that the bonuses in question were merely personal gifts and were not exigible to tax. Evidence was given by an official of the bank that the bank had deducted the respective amounts of the bonuses in its statement of profits for income tax purposes as part of its current expenses, but also that the bank regarded these bonuses as purely personal gifts. It was also contended that there was no distinction between the payment of these bonuses and the payment in respect of the cricketer's benefit in the case of *Seymour* v. *Reed* [1927] A.C. 554, which was held to be a personal gift.

MACNAGHTEN, J., said the expression "personal gift" as used in the case of *Seymour* v. *Reed*, *supra*, was used in contradistinction to remuneration. If the payment was remuneration for the services of the employee, it was taxable, but if it was not remuneration for his services it was not taxable. Therefore to say that it was intended as a "personal gift" was merely to say that it was not intended to be remuneration, but the employer for the purposes of assisting his employee, whom he did in fact remunerate, could not relieve his employee from his obligation to pay income tax by saying "I do not intend it to be remuneration." The bonuses in question were gifts in the sense that the bank were under no obligation to pay them, nevertheless they were gratuities by way of bonus after twenty-five years' continuous service, and there was no ground for reversing the decision of the Commissioners that they were in fact remuneration for services rendered. The appeal would therefore be dismissed.

COUNSEL: *F. Grant*, K.C.; *The Attorney-General* (Sir Donald Somervell, K.C.), and *R. P. Hills.*

SOLICITORS: *Linklaters & Paines; Solicitor of Inland Revenue.*

[Reported by J. H. G. BULLER, Esq., Barrister-at-Law.]

Bibby and Sons, Ltd. *v.* Inland Revenue Commissioners.

Macnaghten, J. 21st and 28th July, 1943.

Revenue—Excess profits tax—Controlling interest of directors in company—Statutory percentage of increase in standard profits where capital in chargeable accounting period has increased over that of standard period—Higher statutory percentage where directors have controlling interest—Holding by directors of over 50 per cent. of shares of company necessary—Less than 50 per cent. held beneficially—More than 50 per cent. held if shares held by trustees included—Shares held by trustees not to be included among shares capable of giving control—Finance (No. 2) Act, 1939 (2 & 3 *Geo.* 6, *c.* 109), *ss.* 13 (3) (9), 22 (*e*).

Case stated by the Commissioners for the Special Purposes of the Income Tax Acts.

B Ltd. appealed from the decision of the Special Commissioners, whereby they had decided that the directors of the company had no controlling interest over the company within the meaning of s. 13 (9), Finance (No. 2) Act, 1939, and therefore the company would only be entitled to claim under s. 13 (3) that their profits during the standard period, as defined by s. 13, had been notionally increased by the statutory percentage of 8 per cent. of the increase of their capital in the chargeable accounting period, as defined by s. 22 (*e*), over their capital in the standard period, whereas if the directors had had the necessary controlling interest within the meaning of s. 13 (9), the company would have been entitled to claim that their profits during the standard period had been notionally increased by the statutory percentage of 10 per cent. By the proviso to s. 13 (3): ". . . if the average amount of the capital employed in a trade or business in any chargeable accounting period is greater or less than the average amount of the capital employed therein in the standard period, the standard profits for a full year shall, in relation to that chargeable accounting period, be increased, or, as the case may be, decreased by the statutory percentage of the increase or decrease in the average amount of the capital employed . . ." By s. 13 (9): ". . . the expression 'statutory percentage' means (*a*) in relation to a trade or business carried on by a body corporate (other than a company, the directors whereof have a controlling interest therein), 8 per cent.; (*b*) in relation to a trade or business not so carried on, 10 per cent." There were eight directors of the company. Five of them held beneficially in their own name 209,332 out of the 500,000 ordinary shares of the company. Three of the directors held a further 57,500 ordinary shares of the company, but they only held them as trustees under a settlement. By the terms of the settlement, however, they would be beneficially entitled on the happening of certain contingent events. It followed, therefore, that if the holding by the directors of the ordinary shares of the company was only to include the 209,332 shares and was to exclude the 57,500 shares, the directors, as holding less than 50 per cent. of the ordinary shares, would not have a controlling interest over the company.

MACNAGHTEN, J., said that in order that the holding of shares should qualify directors for having a controlling interest over the company they must actually have a beneficial interest over and be able to control more than 50 per cent. of the shares. They, however, had no beneficial interest over the 57,500 shares, and as contingent beneficiaries they had no control over them. It followed that the directors had no controlling interest within the meaning of s. 13 (9), and, therefore, were only entitled to claim the statutory percentage of 8 per cent. Appeal dismissed.

COUNSEL: *Tucker*, K.C., and *Scrimgeour; J. H. Stamp* and *R. P. Hills.*

SOLICITORS: *Layton & Co.; Solicitor of Inland Revenue.*

[Reported by J. H. G. BULLER, Esq., Barrister-at-Law.]

Stanley *v.* Inland Revenue Commissioners.

Macnaghten, J. 26th and 28th July, 1943.

Revenue—Sur-tax—Infant—Accumulations by trustees of infant's income during minority—Income vested—Statutory provisions that if infant does not attain majority accumulated income to be added to capital—Whether income accumulated during minority exigible to sur-tax—Income Tax Act, 1918 (8 & 9 *Geo.* 5, *c.* 40), *Sched. E—Trustee Act* (15 *Geo.* 5, *c.* 19), *s.* 31 (2) (ii).

Case stated by the Commissioners for the Special Purposes of the Income Tax Acts.

This was an appeal by S from the decision of the Special Commissioners whereby they confirmed certain assessments to sur-tax for the period 5th April, 1932 to 1937. The sums which had been assessed were in respect of the income of real estates to which S was entitled and which had been accumulated by the trustees of the will of S's father during S's minority, from the date of the father's death on 22nd August, 1931, until S attained his majority on 23rd October, 1936. S's claim that such income was not liable to tax was based on the construction of s. 31 (2), Trustee Act, 1925. Section 31 provides as follows: "(1) Where any property is held by trustees in trust for any person for any interest whatsoever, whether vested or contingent, then, subject to any prior interests or charges affecting the property"—(then follows provisions enabling the trustees during the infancy of such person to pay the whole or part of the income for his maintenance). By subs. 2: "During the infancy of any such person, if his interest so long continues, the trustees shall accumulate all the residue of the income in the way of compound interest . . . and shall hold those accumulations as follows: (i) If any such person—(*a*) attains the age of twenty-one years . . . and his interest in such income during his infancy . . . is a vested interest . . . the trustees shall hold the accumulations in trust for such person absolutely . . . (ii) In any other case the trustees shall, notwithstanding that such person had a vested interest in such income, hold the accumulations as an accretion to the capital of the property

from which such accumulations arose, and as one fund with such capital for all purposes, and so that, if such property is settled land, such accumulations shall be held upon the same trusts as if the same were capital money arising therefrom." Upon the death of his father S became tenant for life of the real estates, and he therefore had a vested interest therein. The trustees, in accordance with the Act, accumulated certain portions of the income from those estates until the date when he attained his majority. It was contended on behalf of S that although he had a vested interest in the income, nevertheless by reason of the provisions of s. 31 (2) (ii) that income during his minority was liable to be created as capital and added to the capital if he happened to die before attaining majority, with the result that if he had thus died his next of kin would not have got the accumulated income, but it would have gone to the remaindermen. The Special Commissioners held that notwithstanding the provisions of s. 31 (2) (ii) of the Act, the accumulated income was rightly deemed to be S's income for purposes of sur-tax.

MACNAGHTEN, J., said that S was during his minority entitled to the income of the real estates, even though, if he had died before attaining majority, that income would have been added to the capital and, unless and until he had died before the happening of that event, that income still remained his property. The income was therefore properly treated as his income for the purposes of the Income Tax Acts, and the appeal would therefore be dismissed.

COUNSEL: *Scrimgeour: The Solicitor-General* (Sir David Maxwell Fyfe, K.C.), *J. H. Stamp* and *R. P. Hills.*

SOLICITORS: *Maples, Teesdale & Co.; Solicitor of Inland Revenue.*

[Reported by J. H. G. BULLER, Esq., Barrister-at-Law.]

Rules and Orders.

(S.R. & O., 1943, No. 1441 L. 30.)

BANKRUPTCY, ENGLAND—GENERAL RULES.

THE BANKRUPTCY (AMENDMENT) RULES, 1943, DATED OCTOBER 2, 1943, MADE UNDER SECTION 132 OF THE BANKRUPTCY ACT, 1914 (4 & 5 GEO. 5, C. 59).

1. The following Rule shall be inserted in the Bankruptcy Rules, 1915,* after Rule 225 and shall stand as Rule 225A:—

"225A. Where a debtor who is a solicitor of the Supreme Court of Judicature is adjudged bankrupt, in the High Court the Senior Bankruptcy Registrar, and in a County Court the Registrar, shall forthwith give notice thereof to the Registrar of Solicitors."

2. These Rules may be cited as the Bankruptcy (Amendment) Rules, 1943, and shall come into operation on the 12th day of October, 1943, and the Bankruptcy Rules, 1915, as amended, shall have effect as further amended by these Rules.

Dated the 2nd day of October, 1943.

Simon, C.

I concur

Hugh Dalton,
President of the Board of Trade.

* S.R. & O. 1914 (No. 1824) I, p. 41.

War Legislation.

STATUTORY RULES AND ORDERS, 1943.

No. 1399. **Alien Restriction** (Palestinian Citizens). Direction, Sept 24, under Art. 22 (1A) of the Aliens Order, 1920, as subsequently amended, relating to Palestinian Citizens.

E.P. 1357. **Apparel and Textiles** (Headwear) Returns. Order, Oct. 1, re Information and Returns relating to Headwear.

E.P. 1408. **Civilian Clothing.** General Licence, Sept. 30, under the Making of Civilian Clothing (Restrictions) (No. 16) Order, 1942.

No. 1384. **Consular Fees** (Amendment) Order in Council, Sept. 24.

No. 1385. Consular Fees China (Amendment) Order in Council, Sept. 24.

No. 1424. **Contributory Pensions.** Dependents War Pensions Regulations, June 30.

E.P. 1439. **Fish** (G.B.). Order, Oct. 2, revoking the General Licence, Sept. 18, under the Fish (Supplies to Catering Establishments) Order, 1942.

E.P. 1433. **Fresh Fruit and Vegetables** Order, Sept. 30, amending the Fresh Fruit and Vegetables (Restriction on Dealings) Order, 1943.

No. 1386. **Marines.** Pay, Pensions, etc. Order in Council, Sept. 24, sanctioning the payment of allowances to certain officers.

E.P. 1412. **Merchant Ships** (Passive Defence) Order, Sept. 23.

No. 1417. **Trading with the Enemy** (Custodian) (China) Order, Sept. 30.

No. 1388. **Visiting Forces** (British Commonwealth). Visiting Forces (Royal Canadian Air Force) Order in Council, Sept. 24.

DRAFT AND PROVISIONAL RULES AND ORDERS, 1943.

Pensions Appeal Tribunals (England and Wales) Rules, Oct. 1.

STATIONERY OFFICE.

List of Statutory Rules and Orders. Sept. 1943.

WAR OFFICE.

Regulations for the Home Guard, 1942. Vol. II. Amendments 4, Sept. 1943.

Notes and News.

Notes.

For the Michaelmas Law Sittings, which began last Tuesday, 3,387 matrimonial causes were set down for hearing, of which 2,074 were undefended and 1,313 defended.

Prisoners of War.—Facilities are available for the regular despatch of THE SOLICITORS' JOURNAL to prisoners of war in Germany. Full particulars can be obtained from the Publishers, THE SOLICITORS' JOURNAL, 29/31, Breams Buildings, London, E.C.4.

The usual monthly meeting of the Directors of the Law Association was held on the 4th October, Mr. C. D. Medley in the chair. There were eight other Directors present. A sum of £343 15s. was voted in relief of deserving applicants and other general business was transacted.

Mr. J. H. Thorpe, K.C., Deputy Chairman, asked counsel in a case at Middlesex Sessions recently not to use the word "fiancé" or "fiancée," but the phrase "young man" or "young woman." "The word fiancée is not English," he said. "When we have English words, why should we use a foreign language?"

The Co-operative Permanent Building Society emphatically dissents from the views on the Uthwatt Report recently expressed by Mr. David W. Smith, past chairman of the Building Societies' Association, and commented upon in our "Current Topics" at pp. 339 and 348, *ante*. The Co-operative Permanent takes the opposite view and believes that the reasonable and long overdue recommendations of the report would considerably help in the extension of home-ownership. They would also help in the provision of houses to let. The implementation of these recommendations by legislation would lessen the cost of the development of land for housing purposes and restrict, if not remove entirely, many abuses hitherto prevalent in the creation of chief rents and ground annuals. The Co-operative Permanent has no information that Mr. Smith is authorised to speak for the movement as a whole, but he certainly does not present the views of their society.

PENSIONS APPEAL TRIBUNALS.

The Lord Chancellor has appointed the following as standing members of the Pensions Appeal Tribunals for England and Wales established under the Pensions Appeal Tribunals Act, 1943:—

Chairmen:
A. B. Ashby, Esq. (President)
S. C. V. Addinsell, Esq.
Sir Owen Beasley, O.B.E.
Sir Lancelot Elphinstone.
E. Russell Gurney, Esq.
H. Emerson Smith, Esq.
Squadron Leader H. J. C. Whitmee.
W. H. Williams, Esq.

Medical Members:
R. G. Blair, Esq., M.B.
R. M. Dannatt, Esq., M.B.
Lt.-Col. P. C. T. Davy, C.M.G., M.B., M.R.C.S., L.R.C.P.
Colonel C. M. Drew, D.S.O.
Colonel J. Heatley-Spencer, C.B.E., M.D., F.R.C.P.
V. Norman, Esq., M.D., M.R.C.P.
B. H. Pain, Esq., M.B., M.R.C.S., L.R.C.P.
Major-General Sir Cuthbert Sprawson, C.I.E., M.D., F.R.C.P.
A. R. Thompson, Esq., M.B., F.R.C.S.
J. E. Venables, Esq., M.D.

Further appointments will be made from time to time as occasion may require and will be announced in the Press.

The first Tribunal will sit at the Royal Courts of Justice, Strand, W.C.2 (Room 271, Centre Block, Strand Entrance), on Monday, 18th October, at 10.30 a.m.

Court Papers.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

MICHAELMAS SITTINGS, 1943.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA	APPEAL COURT I.	Mr. Justice BENNETT
Monday, Oct. 18	Mr. Jones	Mr. Blaker	Mr. Andrews
Tuesday, ,, 19	Reader	Andrews	Jones
Wednesday, ,, 20	Hay	Jones	Reader
Thursday, ,, 21	Harris	Reader	Hay
Friday, ,, 22	Blaker	Hay	Harris
Saturday, ,, 23	Andrews	Harris	Blaker

DATE	GROUP A. Mr. Justice SIMONDS *Non-Witness*	Mr. Justice COHEN *Witness*	GROUP B. Mr. Justice MORTON *Witness*	Mr. Justice UTHWATT *Non-Witness*
Monday, Oct. 18	Mr. Hay	Mr. Harris	Mr. Jones	Mr. Reader
Tuesday, ,, 19	Harris	Blaker	Reader	Hay
Wednesday, ,, 20	Blaker	Andrews	Hay	Harris
Thursday, ,, 21	Andrews	Jones	Harris	Blaker
Friday, ,, 22	Jones	Reader	Blaker	Andrews
Saturday, ,, 23	Reader	Hay	Andrews	Jones

Mr. Stanley Shaw Bond, of Dycheham Park, Petersfield, Hants, and Braemar Castle, Aberdeenshire, chairman and governing director of Messrs. Butterworth & Co. (Publishers), Ltd., left £516,552, with net personalty £450,832.